HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION NO.18939 OF 1995

DATE: 24th October 2006

Between:

1. C.Mahadevi, w/o Kishnamurthy,
   aged 36 years, Occ: Sweeper,
   Tirupati Health Office, Tirupati
   and 16 others.

… Petitioners.

And

The Executive Officer,
Tirumala Tirupati Devastanam,
Tirupati, Chittoor District.

… Respondent.

* * *

ORDER:

This writ petition is filed by C.Mahadevi and 16 others seeking a writ of Mandamus declaring action of the Tirumala Tirupati Devastanams, who is Executive Officer, the respondent herein, in treating the petitioners as NMRs though they were selected and appointed by the respondent after going through regular process of selection, as illegal; and for consequential direction to regularize the services of the petitioners and extend the benefit of seniority and pay scale from the date of their initial appointment.

2. The petitioners, according to the averments contained in the affidavit filed in support of the writ petition, were appointed in

respondent's organization on various dates between 1980 and 1981. The petitioners were sponsored by employment exchange and interviewed. They were, later on, selected and appointed as Sweepers through different memos issued in the year 1979, 1980 and 1981.

3. The only grievance of the petitioners is that the Government of Andhra Pradesh while regularizing the services of all the NMRs including the petitioners vide G.O.Ms.No.296, Revenue (Endts.III) Department, dated 19.4.1988 and G.O.Ms.No.344, Revenue (Endts.III) Department, dated 03.5.1988 and also the proceedings of the Board of Trustees dated 30.10.1990, limited the benefit of regularization to the date of issue of the respective G.Os, instead of giving benefit of regularization from the dates of their first engagement as NMRs.

4. During the course of hearing on 12.9.2006 Sri Ghanta Rama Rao, learned counsel for the petitioners has placed before me a copy of the judgment of learned single judge of this Court in W.P.No.4096 of 1991, dated 12th November 1997, and contended that the issue raised in the present writ petition is covered in all fours by the said judgment.

5. Sri D.Sethu Rami Reddy, learned Standing Counsel for the respondent, however, disputed the claim of the learned counsel for the petitioners and stated that petitioners in the present writ petition stand on a different footing and that therefore, the said judgment of this Court in W.P.No.4096 of 1991 cannot be applied

to them.

6. In the light of these submissions the writ petition was adjourned to enable the respondent to file an additional counter by mentioning distinctive features of the present case from the earlier writ petition. Learned counsel for the respondent, however, during the course of hearing of the matter today, placed before me an additional counter which was already filed earlier.

7. In the judgment of the learned single judge in W.P.No.4096 of 1991, the learned judge referred to G.O.Ms.No.296, dated 19.4.1988, and G.O.Ms.No.344, dated 03.5.1988, and proceedings of the Board of Trustees dated 30.10.1990, and in pursuance of which the services of NMRs who were appointed between the years 1979 and 1984 have been regularized. The learned single judge in his judgment held as follows.

> " The proceedings issued by the Executive Officer dated 24.7.79 make it abundantly clear that the petitioners were appointed against the then existing clear vacancies. There is also no dispute between the parties that the petitioners' names were sponsored by the Employment Exchange Officer and they were subjected to the prescribed selection process. Simply because the proceedings refer to their appointment as NMR Cleaners, it cannot be said that they were appointed under contingency and not on regular basis. There is no need to dwelve further on this on the basis of the pleadings and the document proceded by the petitioners. In the letter written by the A.E.O (R) to the Executive Officer, a copy of which is produced before this Court as additional material paper at para (3), it is specifically pointed out that all the petitioners were appointed as per the service rules after their names were sponsored by the

Employment Exchange. The A.E.O. has stated that the petitioners ought to have been appointed as cleaners on regular time-scales. In the said letter, it was also proposed that all the petitioners had put in more than 10 years of service in the cadre of cleaners and therefore, they be absorbed as Servers on regular basis by way of promotion. The facts stated by the A.E.O. in the proposal submitted to the Executive Officer are not contested. If this is the factual position, it should be held that the petitioners were appointed as Cleaners on regular basis from the beginning of their service. Therefore, the action of the Deputy Executive Officer (S) in regularizing the services of the petitioners only w.e.f. 10.12.1990 is illegal, arbitrary and violative of Article 14 of the Constitution of India. Therefore a case is made out for interference.

In the result, the writ petition is allowed. A writ of Mandamus shall issue to the respondent directing him to regularize the services of the petitioners from the dates of their initial appointment and extend all benefits, pecuniary and otherwise accruing therefrom. The respondent is also directed to consider the claims of the petitioners for promotion to the post of Servers in the canteen run by it, if they are eligible to be promoted to that post. These directions shall be carried out by the respondents within a period of three months from the date of receipt of a copy of this order. No costs."

8. I have gone through the additional counter dated 29th September 2001. I am not able to find any distinction between the petitioners in the present writ petition and those in W.P.No.4096 of 1991. In case of both the sets of employees except the fact that their initial engagement and dates of appointments are different, there is no other distinction that can be brought about to deny the relief which was already granted to the petitioners in W.P.No.4096

of 1991. Though the learned Standing Counsel made strenuous efforts to persuade this court to come to the conclusion that the petitioners stand on a different footing, I do not see any reason why the petitioners in the present writ petition should be denied the same relief, which this Court has granted to the petitioners in W.P.No.4096 of 1991. I am told that the said judgment of the learned single judge was confirmed in W.A.No.727 of 1998 dated 28.4.1998 and the S.L.P. filed against the said judgment was also dismissed.

9. For the aforementioned reasons, the writ petition is allowed in terms of the judgment in W.P.No.4096 of 1991 dated 12th November 1997. A writ of Mandamus shall issue to the respondent directing to regularize the services of the petitioners from the dates of their initial appointment and extend all benefits, pecuniary and otherwise, accruing therefrom. No costs.

_____

24.10.2006.

BSB